

OPINION SUMMARY

MISSOURI COURT OF APPEALS EASTERN DISTRICT

DIVISION FIVE

STATE OF MISSOURI,)	No. ED95265
)	
Respondent,)	Appeal from the Circuit Court
)	of the City of St. Louis
vs.)	
)	Honorable Timothy Wilson
JOHNNIE PULLEY,)	
)	
Appellant,)	
)	Filed: October 4, 2011

Johnnie Pulley (Pulley) appeals from the trial court's judgment following a jury conviction for second-degree murder. Pulley was sentenced to ten years imprisonment with the Department of Corrections. The trial court suspended the execution of sentence and placed Pulley on probation for a period of five years.

AFFIRMED.

Division 5 holds: 1) The trial court did not err in denying Pulley's motion for judgment of acquittal at the close of all evidence because there was sufficient evidence from which a reasonable jury could find that Pulley had the requisite mens rea to sustain a conviction for second degree murder; 2) the trial court did not err in refusing to submit a jury instruction for the lesser included offense of first-degree involuntary manslaughter because there was insufficient evidence from which a reasonable jury could have concluded that Pulley acted recklessly when he shot Coleburg. Evidence that Pulley acted in self-defense did not establish the element of recklessness required to convict Pulley on the lesser included offense of involuntary manslaughter as was required to instruct the jury on the lesser charge; 3) The trial court did not err in refusing to submit Pulley's proffered character evidence jury instruction because the instruction submitted by Pulley included a reference to a charge involuntary manslaughter, which was not before the jury.

Opinion by: Kurt S. Odenwald, C.J. Glenn A. Norton, J., and Ben Burkemper, Sp. J., Concur.

Attorney for Appellant: Maleaner Harvey

Attorney for Respondent: Chris Koster and Richard A. Starnes

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